

# Senate Study Bill 3064 - Introduced

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE  
ON JUDICIARY BILL BY  
CHAIRPERSON ZAUN)

## A BILL FOR

- 1 An Act relating to notice and opportunity to repair
- 2 construction defects and including effective date and
- 3 applicability provisions.
- 4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1     Section 1.   NEW SECTION.   **686.1 Definitions.**

2     As used in this chapter, unless the context otherwise  
3 requires:

4     1.   "*Action*" means any civil action or arbitration proceeding  
5 for damages or indemnity asserting a claim for injury to  
6 property, real or personal, or injury to person or wrongful  
7 death arising out of the unsafe or defective condition of an  
8 improvement to real property based on tort, breach of contract,  
9 or express or implied warranty.

10    2.   "*Association*" means an entity or homeowners association  
11 created for the purposes of managing the operations of a  
12 community as set forth in a declaration of covenants or  
13 declaration of submission of property to horizontal property  
14 regime filed of record in the county that the property is  
15 located.

16    3.   "*Claimant*" means an owner, a subsequent owner, or an  
17 association who asserts a claim for damages against a general  
18 contractor or subcontractor concerning a construction defect.

19    4.   "*Construction defect*" means an alleged or actual unsafe  
20 or defective condition of an improvement to real property.

21    5.   "*General contractor*" means a person who does work or  
22 furnishes materials by contract, express or implied, with an  
23 owner.

24    6.   "*Owner*" means the legal or equitable titleholder of  
25 record to real property or the holder of a leasehold interest.

26    7.   "*Serve*", "*served*", or "*service*" means delivery by  
27 certified mail with a United States postal service record  
28 of evidence of delivery or attempted delivery to the last  
29 known address of the addressee, by hand delivery with written  
30 evidence of delivery, or by delivery by any courier with  
31 written evidence of delivery.

32    8.   "*Subcontractor*" means a person furnishing material  
33 or performing labor upon any building, erection, or other  
34 improvement to land, except those having contracts directly  
35 with the owner.

1     Sec. 2. NEW SECTION.   **686.2 Action — compliance.**

2     A claimant shall not file an action without first complying  
3 with the requirements of this chapter. If a claimant files an  
4 action alleging a construction defect without first complying  
5 with the requirements of this chapter, on timely motion by a  
6 party to the action, the court shall stay the action, without  
7 prejudice, and the action shall not proceed until the claimant  
8 has complied with the requirements.

9     Sec. 3. NEW SECTION.   **686.3 Notice and opportunity to**  
10 **repair.**

11     1. Prior to commencing an action alleging a construction  
12 defect, the claimant shall, at least sixty days before  
13 filing any action, or at least one hundred twenty days before  
14 filing an action involving a class action or an association  
15 representing more than twenty owners, serve written notice of  
16 claim on the general contractor and subcontractor. The notice  
17 of claim shall refer to this chapter and must describe the  
18 claim in reasonable detail sufficient to determine the general  
19 nature of each alleged construction defect, a description of  
20 the damage or loss resulting from the defect, if known, and  
21 any work or inspections completed to determine the cause of  
22 the damage or loss or correct the construction defect. This  
23 subsection does not preclude a claimant from filing an action  
24 sooner than sixty or one hundred twenty days, as applicable,  
25 after service of written notice as expressly provided in  
26 subsection 6, 7, or 8.

27     2. *a.* Within thirty days after service of the notice of  
28 claim, or within sixty days after service of the notice of  
29 claim involving a class action or an association representing  
30 more than twenty owners, the person served with the notice of  
31 claim under subsection 1 is entitled to perform a reasonable  
32 inspection of the property or of each unit subject to the claim  
33 to assess each alleged construction defect. The claimant  
34 shall provide the person served with notice under subsection  
35 1 and the person's general contractors, subcontractors, or

1 agents reasonable access to the property during normal working  
2 hours to inspect the property to determine the nature and  
3 cause of each alleged construction defect and the nature and  
4 extent of any repairs or replacements necessary to remedy each  
5 construction defect. The person served with notice under  
6 subsection 1 shall reasonably coordinate the timing and manner  
7 of any and all inspections with the claimant to minimize the  
8 number of inspections. The inspection may include reasonable  
9 destructive testing by mutual agreement under the following  
10 terms and conditions:

11 (1) If the person served with notice under subsection 1  
12 determines that destructive testing is necessary to determine  
13 the nature and cause of the alleged construction defects, the  
14 person shall notify the claimant in writing.

15 (2) The notice shall describe the destructive testing  
16 to be performed, the person selected to do the testing, the  
17 estimated anticipated damage and repairs to or restoration of  
18 the property resulting from the testing, the estimated amount  
19 of time necessary for the testing and to complete the repairs  
20 or restoration, and the financial responsibility offered for  
21 covering the costs of repairs or restoration.

22 (3) The testing shall be done at a mutually agreeable time.

23 (4) The claimant or a representative of the claimant may be  
24 present to observe the destructive testing.

25 *b.* If the claimant refuses to agree and permit reasonable  
26 destructive testing, the claimant shall have no claim for  
27 damages which could have been avoided or mitigated had  
28 destructive testing been allowed when requested and had a  
29 feasible remedy been promptly implemented.

30 3. The general contractor or subcontractor may serve a  
31 copy of the notice of claim to each subcontractor or general  
32 contractor whom the general contractor or subcontractor  
33 reasonably believes is responsible for a construction defect  
34 specified in the notice of claim and shall note the specific  
35 construction defect for which the subcontractor or general

1 contractor is alleged to be responsible. The notice described  
2 in this subsection shall not be construed as an admission of  
3 any kind. A general contractor or subcontractor may inspect  
4 the property in the manner described in subsection 2.

5 4. Within fifteen days after service of a copy of the notice  
6 of claim pursuant to subsection 3, or within thirty days after  
7 service of the copy of the notice of claim involving a class  
8 action or an association representing more than twenty owners,  
9 the general contractor or subcontractor must serve a written  
10 response to the general contractor or subcontractor who served  
11 a copy of the notice of claim. The written response shall  
12 include a report, if any, of the scope of any inspection of  
13 the property, the findings and results of the inspection, a  
14 statement of whether the subcontractor or general contractor is  
15 willing to make repairs to the property or whether the claim  
16 is disputed, a description of any repairs the subcontractor or  
17 general contractor is willing to make to remedy the alleged  
18 construction defect, and a timetable for the completion of  
19 the repairs. This response may also be served on the initial  
20 claimant by the general contractor or subcontractor.

21 5. Within forty-five days after service of the notice  
22 of claim, or within seventy-five days after service of the  
23 notice of claim involving a class action or an association  
24 representing more than twenty owners, the person who was served  
25 the notice under subsection 1 shall serve a written response to  
26 the claimant. The response shall be served to the attention  
27 of the person who signed the notice of claim, unless otherwise  
28 designated in the notice of claim. The written response must  
29 provide for one of the following:

30 a. A written offer to remedy the alleged construction defect  
31 at no cost to the claimant, a description of the proposed  
32 repairs necessary to remedy the construction defect, and a  
33 timetable for the completion of such repairs.

34 b. A written offer to compromise and settle the claim by  
35 monetary payment, that will not obligate the person's insurer,

1 and a timetable for making payment.

2     *c.* A written offer to compromise and settle the claim by  
3 a combination of repairs and monetary payment that will not  
4 obligate the person's insurer, and which includes a detailed  
5 description of the proposed repairs and a timetable for the  
6 completion of such repairs and making payment.

7     *d.* A written statement that the person disputes the claim  
8 and will not remedy the construction defect or compromise and  
9 settle the claim.

10     *e.* A written statement that a monetary payment, including  
11 insurance proceeds, if any, will be determined by the person's  
12 insurer after notification to the insurer by means of serving  
13 the claim, which service shall occur at the same time the  
14 claimant is notified of this settlement option, which the  
15 claimant may accept or reject. A written statement under this  
16 paragraph may also include an offer under paragraph "*c*", but  
17 such offer shall be contingent upon the claimant also accepting  
18 the determination of the insurer whether to make any additional  
19 monetary payment.

20     6. If the person served with a notice of claim pursuant  
21 to subsection 1 disputes the claim and will neither remedy  
22 the construction defect nor compromise and settle the claim,  
23 or does not respond to the claimant's notice of claim within  
24 the time provided in subsection 5, the claimant may, without  
25 further notice, proceed with an action against that person for  
26 the claim described in the notice of claim. Nothing in this  
27 chapter shall be construed to preclude a partial settlement or  
28 compromise of the claim as agreed to by the parties and, in  
29 that event, the claimant may, without further notice, proceed  
30 with an action on the unresolved portions of the claim.

31     7. A claimant who receives a timely settlement offer shall  
32 accept or reject the offer by serving written notice of such  
33 acceptance or rejection on the person making the offer within  
34 forty-five days after receiving the settlement offer. If  
35 a claimant initiates an action without first accepting or

1 rejecting the offer, the court shall stay the action upon  
2 timely motion until the claimant complies with this subsection.

3 8. If the claimant timely and properly accepts the offer  
4 to repair an alleged construction defect, the claimant shall  
5 provide the offeror and the offeror's agents reasonable access  
6 to the claimant's property during normal working hours to  
7 perform the repair by the agreed-upon timetable as stated  
8 in the offer. If the offeror does not make the payment or  
9 repair the construction defect within the agreed time and in  
10 the agreed manner, except for reasonable delays beyond the  
11 control of the offeror, including but not limited to weather  
12 conditions, delivery of materials, claimant's actions, or  
13 issuance of any required permits, the claimant may, without  
14 further notice, proceed with an action against the offeror  
15 based upon the claim in the notice of claim. If the offeror  
16 makes payment or repairs to the defect within the agreed  
17 time and in the agreed manner, the claimant is barred from  
18 proceeding with an action for the claim described in the notice  
19 of claim or as otherwise provided in the accepted settlement  
20 offer.

21 9. This section does not prohibit or limit a claimant from  
22 making any necessary emergency repairs to the property as are  
23 required to protect the health, safety, and welfare of any  
24 person.

25 10. Any offer or failure to offer, pursuant to subsection 5,  
26 to remedy a construction defect or to compromise and settle the  
27 claim by monetary payment does not constitute an admission of  
28 liability with respect to the defect and is not admissible in  
29 an action that is subject to this chapter.

30 11. This section does not relieve the person who is served  
31 a notice of claim under subsection 1 from complying with all  
32 contractual provisions of any liability insurance policy as  
33 a condition precedent to coverage for any claim under this  
34 section.

35 Sec. 4. NEW SECTION. 686.4 Multiple construction defects.

1 The procedures in this chapter apply to each construction  
2 defect. However, a claimant may include multiple defects in  
3 one notice of claim. A claimant may amend the initial list of  
4 construction defects to identify additional or new construction  
5 defects as the defects become known to the claimant. The court  
6 shall allow the action to proceed to trial only as to alleged  
7 construction defects that were noticed and for which the  
8 claimant has complied with this chapter and as to construction  
9 defects reasonably related to, or caused by, the construction  
10 defects previously noticed. Nothing in this section shall  
11 preclude subsequent or further actions.

12 Sec. 5. NEW SECTION. **686.5 Limitations of chapter.**

13 This chapter does not do any of the following:

14 1. Bar or limit any rights, including the right of specific  
15 performance to the extent such right would be available in the  
16 absence of this chapter, any causes of action, or any theories  
17 on which liability may be based, except as specifically  
18 provided in this chapter.

19 2. Bar or limit any defense, or create any new defense,  
20 except as specifically provided in this chapter.

21 3. Create any new rights, causes of action, or theories on  
22 which liability may be based.

23 Sec. 6. NEW SECTION. **686.6 Effect of arbitration clauses.**

24 To the extent that an arbitration clause in a contract for  
25 the sale, design, construction, or remodeling of real property  
26 conflicts with this chapter, this chapter shall control.

27 Sec. 7. **EFFECTIVE DATE.** This Act, being deemed of immediate  
28 importance, takes effect upon enactment.

29 Sec. 8. **APPLICABILITY.** This Act applies to defects to  
30 all real property or to any improvement to real property,  
31 including all real property or improvements in existence prior  
32 to the effective date of this Act, for which litigation has not  
33 commenced prior to the effective date of this Act.

34 **EXPLANATION**

35 The inclusion of this explanation does not constitute agreement with



1           the explanation's substance by the members of the general assembly.

2       This bill relates to notice and opportunity to repair  
3 construction defects. The bill proposes a new Code chapter  
4 which provides a mandatory dispute resolution process for  
5 construction defects to new property or improvements to an  
6 existing property. The bill is effective upon enactment and  
7 applies to defects to all real property or to any improvement  
8 to real property, including all real property or improvements  
9 in existence prior to the effective date of the bill, for  
10 which litigation has not commenced prior to the effective date  
11 of the bill. The bill provides that a claimant must comply  
12 with the requirements set forth in the bill before filing an  
13 action. The bill provides that if a claimant files an action  
14 alleging a construction defect without first complying with  
15 the requirements of the bill, the court shall stay the action  
16 without prejudice until the requirements have been met. The  
17 bill sets forth specific time frames for each part of the  
18 dispute resolution.

19       The bill provides that the claimant shall serve written  
20 notice of a construction defect claim on the general contractor  
21 and subcontractor. In the notice, the claimant shall refer  
22 to the new Code chapter and describe the claim in reasonable  
23 detail sufficient to determine the general nature of each  
24 alleged construction defect, provide a description of the  
25 damage or loss resulting from the defect, if known, and  
26 describe any work or inspections completed to determine the  
27 cause of the damage or loss or correct the construction defect.

28       The bill provides that after being served with the notice  
29 of claim, the person is entitled to perform a reasonable  
30 inspection of the property or of each unit subject to the  
31 claim to assess each alleged construction defect. The bill  
32 provides that the claimant shall provide the person served with  
33 notice reasonable access to the property during normal working  
34 hours to inspect the property to determine the nature and  
35 cause of each alleged construction defect and the nature and

1 extent of any repairs or replacements necessary to remedy each  
2 construction defect. The bill provides additional details,  
3 including providing for destructive testing.

4 The bill provides that the general contractor or  
5 subcontractor may serve a copy of the notice of claim to  
6 each subcontractor or general subcontractor whom the general  
7 contractor or subcontractor reasonably believes is responsible  
8 for each construction defect specified in the notice of claim.  
9 The bill provides that subcontractors shall be entitled to  
10 inspect in the same manner as general contractors. The general  
11 contractor or subcontractor must then serve a written response,  
12 which shall include a report, if any, of the scope of any  
13 inspection of the property, the findings and results of the  
14 inspection, a statement of whether the general contractor or  
15 subcontractor is willing to make repairs to the property or  
16 whether such claim is disputed, a description of any repairs  
17 they are willing to make, and a timetable for the completion of  
18 the repairs. This response may also be served on the initial  
19 claimant by the general contractor.

20 The bill provides that the person who was served the notice  
21 must serve a written response to the claimant. The bill  
22 provides that the written response must fall into one of five  
23 categories, which are laid forth in the bill.

24 If the person served with a notice of claim disputes the  
25 claim and will neither remedy the construction defect nor  
26 compromise and settle the claim, or does not respond to the  
27 claimant's notice of claim within the time provided in the  
28 bill, the claimant may, without further notice, proceed with  
29 an action against that person for the claim described in the  
30 notice of claim.

31 A claimant who receives a timely settlement offer must  
32 accept or reject the offer by serving written notice of such  
33 acceptance or rejection on the person or company making the  
34 offer within the time period set forth in the bill after  
35 receiving the settlement offer. The bill specifies that if

1 a claimant initiates an action without first accepting or  
2 rejecting the offer, the court shall stay the action upon  
3 timely motion until the claimant complies with the requirement.

4 The bill provides that if the claimant timely and properly  
5 accepts the offer to repair an alleged construction defect,  
6 the claimant shall provide the offeror and the offeror's  
7 agents reasonable access to the claimant's property during  
8 normal working hours to perform the repair by the agreed-upon  
9 timetable as stated in the offer. If the offeror does not make  
10 the payment or repair the construction defect within the agreed  
11 time and in the agreed manner, except for reasonable delays  
12 beyond the control of the offeror, the claimant may, without  
13 further notice, proceed with an action against the offeror  
14 based upon the claim in the notice of claim. If the offeror  
15 makes payment or repairs the defect within the agreed time and  
16 in the agreed manner, the claimant is barred from proceeding  
17 with an action for the claim described in the notice of claim  
18 or as otherwise provided in the accepted settlement offer.

19 The bill does not bar or limit any rights, including the  
20 right of specific performance to the extent such right would be  
21 available in the absence of the new Code chapter, any causes of  
22 action, or any theories on which liability may be based, except  
23 as specifically provided in the bill. Additionally, the bill  
24 does not bar or limit any defense, or create any new defense,  
25 except as specifically provided in the new Code chapter.  
26 Finally, the bill does not create any new rights, causes of  
27 actions, or theories on which liability may be based.

28 The bill provides that to the extent that an arbitration  
29 clause in a contract for the sale, design, construction, or  
30 remodeling of real property conflicts with the bill, the bill  
31 shall control.